

REMARKS

Applicant has reviewed the Office Action dated as mailed February 25, 2009 and the documents cited therewith and the present amendment has been prepared in response thereto. Claims 34 through 44 and 46 through 50 were pending in the application. Claims 35 through 39, 44, 47, 48 and 50 were withdrawn from consideration. Claims 34, 40 through 43, 46 and 49 were rejected.

Independent claims 34, 41 and 46 and dependent claims 43 and 49 have been amended. Claims 40 and 42 have been canceled. Claims 34, 41, 43, 46 and 49 read on elected Species (3), Figs. 9a-9d and elected Invention IV.

As a preliminary matter, the Final restriction requirement is not consistent with the terms of the restriction requirement as set forth by the Examiner. The Examiner, in the restriction requirement dated December 3, 2008, clearly indicated that claims 35 and 36 would be examined with any group that is elected. In the outstanding Office Action claims 35 and 36 were withdrawn from consideration as being drawn to a non-elected invention. It is submitted that the Final restriction requirement is not consistent with the restriction requirement as originally set forth and that the withdrawal of claims 35 and 36 from consideration should be reversed and claims 35 and 36 should be treated on the merits.

Independent claims 34 and 41 were rejected as being anticipated by Hall and independent claim 46 was rejected as being obvious over Hall in view of Perbal. Hall shows a helical compression spring located over the rod and positioned between the support and the end of the rod opposite to the movable jaw. Perbal shows a lamp having an adjustable bracket that uses a spring 35 as a counterbalance to balance the weight of the lamp. The Examiner concluded that it would have been obvious to "employ a spiral wound spring in the housing of Hall and connect the end of the spring to the pull or push rod in lieu of the coil spring 148 of Hall". The Examiner supported the combination stating that one skilled in the art would have been motivated to do this in order to use a spring located in a protective housing. The Examiner further concluded that the manner of connecting the spring to the pull or push rod is no more than an obvious matter of design choice.

The Examiner further took Official Notice that “pulling wires connected to pulleys are commonly received in a seat or groove in a structure so that the moving wires are not exposed”.

It is submitted that the independent claims as amended define over the art relied on by the Examiner either alone or in combination. Claim 34 requires, *inter alia*:

- a torsion spring connected to the push or pull rod for displacement of the push or pull rod to move the movable jaw toward the stationary jaw;
- the torsion spring comprises an unwound band section that is at least partly positioned in a seat or a groove of the push or pull rod and a wound band section positioned in the support; and
- the torsion spring is located between the support and the movable jaw.

Hall does not show a torsion spring. Further, the spring in Hall does not include a wound section in the support or an unwound section positioned in a seat or groove on the push or pull rod. Finally, Hall does not show a spring located between the support and the movable jaw. Thus, claim 34 is not anticipated by Hall.

As explained in the present application the use of a helical compression spring such as found in Hall requires a long drive path. As a result a tool using a spring such as disclosed in Hall has a long axial length and is relatively heavy. A clamping or spreading tool according to the invention does not require the added length to support the compression spring such that it can be made more compact and lighter – important characteristics for a hand tool. The use of the torsion spring allows the exposed unwound band section to be located between the support and the movable jaw where it does not affect the size or profile of the tool and is effectively out of the way of the user. Further, a helical compression spring such as shown in Hall has non-linear power output with great thrust at the beginning of movement with gradually diminishing thrust. The large thrust at the beginning of movement can create a safety hazard while the diminished thrust at the end of the range of motion may not adequately move the bar. In the tool of the invention, the torsion spring provides uniform, linear power output over the entire range of motion. The claimed invention also eliminates the chance that the user will become caught

between the coils of spring when the spring explosively expands as is the case with the Hall design.

It is submitted that the combination of Hall and Perbal would not have been obvious to one skilled in the art and that, even if combined, the combination of references does not disclose every claim limitation. Perbal discloses a lamp in which spring 35 is used as a counterbalance to counterbalance the weight of the lamp. The spring is disposed between and extends out of column 14. The end of the spring connects to shaft 36.

The Examiner concluded that it would have been obvious to “employ a spiral wound spring in the housing of Hall and connect the end of the spring to the pull or push rod in lieu of the coil spring 148 of Hall”. The Examiner supported the combination stating that one skilled in the art would have been motivated to do this in order to use a spring located in a protective housing.

It is submitted that one of ordinary skill in the art would not have been motivated to combine Hall and Perbal. These references are related to vastly different technologies and one of ordinary skill in the tool arts would not look to a lamp counterweight for a teaching of how to improve a clamping/spreading device. The only motivation for making the combination is based on impermissible hindsight to meet the claim language.

In Perbal the spring acts as a counterweight. The spring does not move the lamp to retract a lamp element. The spring is used to hold a lamp element in a static position. However, the claims requires the “displacement of the push or pull rod to move said movable jaw toward said stationary jaw”. The spring in Perbal does not move or displace any element let alone the rod of a clamp. One of ordinary skill in the art would not have looked to a lamp counterweight to modify a clamping/spreading tool.

Further if the spring of Hall was replaced by the spring of Perbal, the Perbal spring would be located between the support and the end of the rod opposite the movable jaw, i.e. the location of the spring in the Hall reference. Such a device would be inoperable. Thus, even if combined,

the references would not show the torsion spring located between the support and the movable jaw as required by claim 34.

The Examiner stated the reason for making the combination as “One skilled in the art would have been motivated to do this in order to enable use of a spring located in a protective housing.” However the spring in Perbal is not located in a protective housing. The spring 35 is located between plates 14 and is clearly exposed. Thus, the justification for the combination of references is not supported by the actual teachings of the art relied on by the Examiner.

Finally, the Examiner relies on Official Notice that “pulling wires connected to pulleys are commonly received in a seat or groove in a structure so that the moving wires are not exposed”.

The Examiner concluded that the manner of connecting the spring to the pull or push rod is no more than an obvious matter of design choice. The Applicant is unclear as to what prior art the Examiner is referring to by “pulling wires connected to pulleys” or how such prior relates to or renders obvious the claimed invention. In accordance with MPEP §2144.03 Official Notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. The applicant traverses the reliance on Official Notice. The applicant is unable to identify the prior art the Examiner is relying on to make the rejection or its applicability to the claimed invention. The examiner is requested to provide documentary evidence in support of these findings.

It is submitted that claim 34 defines over the art of record and is allowable.

Claim 41 sets forth, *inter alia*:

a spiral band spring for moving the rod to move the movable jaw toward said first jaw;
and

the spring has a first end and a second end, said first end being wound and supported completely within the support and the second end is connected to the rod external of the support.

Claim 41 is allowable for the same reasons as explained above for claim 34 for the use of a spiral band spring. In the tool of the invention, the spiral band spring provides uniform, linear power output over the entire range of motion. The use of the spiral band spring allows the exposed unwound band section to be located between the support and the movable jaw where it does not affect the size or profile of the tool and is effectively out of the way of the user. This arrangement also eliminates the chance that the user will become caught between the coils of spring when the spring explosively expands as is the case with the Hall design. Further claim 41 requires that the wound end of the spring is located completely within the support. The references, even if combined as suggested by the Examiner, do not show such an arrangement. The spring in Perbal is exposed and extends beyond the edges of column member 14. It is submitted that claim 41 is allowable for these reasons as well.

Claim 46 sets forth, *inter alia*:

a spiral band spring for moving the rod to move the movable jaw toward the first jaw: the spring has a wound portion and an unwound portion arranged such that the spring extends along the length of the rod between the support and the movable jaw; and the wound end is supported in the support and the unwound portion is connected to the rod external of the support for moving said rod.

Claim 46 is allowable for the same reasons as explained above for claim 41 for the use of a spiral band spring to move the rod. Further claim 46 requires that the spring extends along the length of the rod between the support and the movable jaw. The references, even if combined as suggested by the Examiner, do not show such an arrangement. It is submitted that claim 46 is allowable for these reasons as well.

The remaining claims each depend from one of the claims discussed above and are allowable for at least the same reasons.

In summary it is submitted that, upon entry of the present amendment, all claims are allowable and that the application is in a condition for allowance.

If the Examiner has any questions about the present Amendment a telephone interview is requested.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 13-4365.

Respectfully submitted,

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